



CRP.PD.No.1185/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP. (PD). No.1185 of 2019
and CMP. No.7603 of 2019

[Video Conferencing]

1.Lakshmi @ Mahesh
2.Mani

.. Petitioners

Vs.

Ramesh

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside Fair and Final Orders dated 01.12.2018 passed in I.A.No.353/2017 in O.S.No.37/2009 on the file of the learned Subordinate Judge, Kallakurichi.

For Petitioners : Ms.Revathy
for Mr.R.Nalliyappan

For Respondent : Mr. T.S.Vijaya Raghavan



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ORDER

This Civil Revision Petition is directed as against the order passed by the learned Subordinate Judge, Kallakurichi in I.A. No.353 of 2017 in O.S.No.37 of 2009.

2. The respondent as plaintiff filed a Suit in O.S. No.37 of 2009 on the file of the Sub Court, Kallakurichi for specific performance. It is admitted that the Suit was decreed *ex parte* against the husband of 1st petitioner. An Execution Petition was also filed. Thereafter, the revision petitioners filed an application to set aside the *ex parte* decree. Along with that an application in I.A. No.42 of 2012 is filed to condone the delay of 845 days in filing the petition to set aside the *ex parte* decree. It is stated that the petitioners did not appear on the day when the petition was posted for hearing. Therefore, the petition to condone the delay of 845 days to set aside the *ex parte* decree was dismissed for default. As a consequence, the petition filed by the petitioners under Order 9 Rule 13 was also dismissed.



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3. It is admitted that the petitioners thereafter filed an application in I.A. No.353 of 2017 to restore the petition to condone the delay in filing the petition to set aside the *ex parte* decree. It is stated that the said petition was also filed with the delay of 86 days. Though the lower Court condoned the delay in filing the petition to restore I.A. No.42 of 2012, dismissed the application to restore I.A.No.42/2012 mainly on the ground that the attitude of petitioners cannot be appreciated. The lower Court also recorded that the petitioners are not following the case properly and frequent non-appearance of parties cannot be condoned.

4. This Court is of the view that the petitioners as defendants in the suit for specific performance should be given a fair opportunity to defend their case on merits. It is not in dispute that the suit was originally filed against the husband of the first petitioner. Since the husband of 1st petitioner died during the pendency of the Suit, the petitioners were impleaded in the Execution Petition pursuant to an *ex parte* decree as against the husband of the 1st petitioner. Though the petitioners came to know about the *ex parte* decree, the question whether the petitioners have



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explained the delay is the subject matter of a different application.

However, the petition to condone the delay in I.A. No.42 of 2012 was dismissed for default for non- appearance. When the delay in filing the petition to restore the condone delay application is allowed, the Lower Court is expected to allow the restoration application if there is sufficient cause for non appearance. In matters like this, the Court is not expected to be more pedantic. The affidavit filed in support of the petition certainly contain a reason for non appearance. It is stated by the petitioners that they were in Kerala seeking employment for their livelihood. The Lower Court has simply said that the reasons for non appearance are not convincing. In cases like this, a party should not be deprived of an opportunity of further hearing unless the party is guilty of misconduct or gross negligence. The past conduct cannot be a sole ground if there is sufficient cause.

5. Considering the fact that the Suit is for specific performance, this Court always show indulgence to favour a party prosecuting or defending his case on merits. In this case, the petitioners will be put to great hardship if the petition filed by them for condonation is not restored. Further the



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restoration application to restore I.A. No.42 of 2012 should be considered on merits and not on the conduct of parties in earlier occasions. Keeping in mind the settled law and the approach of the lower Court, this Court is inclined to allow this Civil Revision petition. However, the Lower Court is permitted to consider and dispose of I.A. No.42 of 2012, uninfluenced by any of the observation of this Court in this Civil Revision Petition.

6. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes / No
Speaking order / Non-speaking order
Internet : Yes

cda / bkn

To

1.The Subordinate Judge, Kallakurichi.



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S.S.SUNDAR, J.,

cda

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